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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/732,731

12/10/2003

Timothy M. Holub

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LEYDIG, VOIT & MAYER, LTD.

(SEATTLE OFFICE)

TWO PRUDENTIAL PLAZA

SUITE 4900

CHICAGO, IL 60601-6731

EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3636

NOTIFICATION DATE

DELIVERY MODE

01/28/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@leydig.com

rwylie@leydig.com

bbannister@leydig.com

Office Action Summary	Application No. 10/732,731	Applicant(s) HOLUB, TIMOTHY M.	
	Examiner Winnie Yip	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-23 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's amendment filed on October 23, 2007.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

1. Claims 21-23 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US Patent No. 5,732,726) in view of Pui et al. (US Patent No. 5,842,939), and further in view of Powell et al. (US Patent No. 6,155,280).

Lee shows and teaches a shelter (10) comprising: a pole assembly comprising at least one hub (42) each including a plurality of tubular members (60), a plurality of upright poles each including an upper pole segment (16) and a lower pole segment (14), wherein the upper pole segment is removably attached to the hub by a connection, the lower pole segment (14) is connected to the respective upper pole segment (16) so that the lower pole segment is more vertical with respect to a surface than the upper pole segment when the shelter is erected on the surface, wherein the connections between the upright poles and one of the respective hub include the plurality of tubular members (60) formed on the hub (42) each having a tubular opening (64) and a locking slot, the upper pole segments (16) each includes an upper end being inserted into the respective tubular member of the hub and having a spring detent biased into the slot such that the upper pole segments (16) of the upright poles being removably and non-rotatably connected to the hub respectively, and a canopy (12) being supported by the pole assembly and extending over the upper and the lower pole segments. Lee does not teach the connection comprising an oblong cross section for the hub and an oblong cross section for the first upper pole segment

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such that the two oblong cross sections connecting together so that the upper pole segment does not rotate relative to the hub. However, Pui et al. teach a portable shelter comprising a pole assembly including a plurality of hubs (12A, 12C, or 12B) each having two tubular members, at least one tubular member having an oblong cross section (12AB), a plurality of pole segments being connected to the hubs, and at least one of the pole segments having a oblong cross section with two opposite flat portions being inserted into the oblong cross section of the tubular member of the corresponding hub such that the flat portions of the oblong cross sections being connected together so the pole segment (14A) does not rotate relative to the hub (12A, 12B, or 12D). It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the shelter of Lee having the end of the upper pole segment and the tubular opening of the tubular members of the hub having matting oblong cross sections to provide an alignment with non-rotatably connection between two tubular member as taught by Pui et al. for easily connecting two tubular members together without adjusting a locking position of a pole with without twisting the pole with respect to a hub.

Further, although Lee is silent of the canopy that is extended less than half length of the lower pole segment as now claimed, Powell et al. teaches, as old and known, a covering system comprising a pole assembly comprising at least one hub (102, 108)) and a plurality of upright poles (80), each upright poles including an upper segment (26) and a lower segment (22), and a canopy (40) being supported on the pole assembly, wherein the canopy (40) includes an upper portion (42) covering the upper segments of the upright poles, and a lower portion (44) extending and covering a portion of the lower segments of the upright poles, and the portion may less than half the length of the lower pole segment (22) (see Fig. 1). Since applicant has not disclosed that

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the canopy extends at a specific length the pole assembly solves any stated problem or is for any particular purpose, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have the shelter of Lee having the canopy extending less than a length of the lower segment of the upright poles of the pole assembly instead of covering a whole of the pole assembly as taught by Powell et al. for providing an open area to be easily entered and to allow great air passing through. And, it appears that shelter of the claimed invention would perform equally well with the canopy extending a portion of the pole assembly instead of covering a whole length of the pole assembly as to accommodate variety applications.

Regarding claim 27, Lee further teaches the shelter, see Fig. 4, including four upright poles each removably connected to the hub.

Regarding claims 28, Lee further teaches the shelter may have other alternative embodiment, as shown in Fig. 2, including two roof hubs (42), each hub having two tubular members to receive two upright poles respectively and a tubular member to receive at least one horizontal pole (40) for connection between two hubs as claimed.

Wherein, each of the connection between the upright poles and the tubular members of the hubs would have been obvious to be formed with oblong cross section as taught by Pui et al. for providing non-rotatably connection therebetween. But the horizontal pole connected to the least one tubular member of the hub being rotatably connected with each other relatively.

2. Claims 21-23 and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emard (US Patent No. 4,941,500) in view of Pui et al. (US Patent No. 5,842,939).

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Emard shows and teaches a shelter (1) comprising: a pole assembly comprising at least one hub (14) each including a plurality of tubular members (15), a plurality of upright poles each including an upper pole segment formed by telescopic sections (11, 12) and a lower pole segment formed by telescopic sections (3,4), wherein the upper pole segment is removably attached to the hub by a connection, the lower pole segment (4) is connected to the respective upper pole segment (11) so that the lower pole segment is more vertical with respect to a surface than the upper pole segment when the shelter is erected on the surface, wherein the connections between the upright poles and one of the respective hub include the plurality of tubular members (15) formed on the hub (14) each having a tubular opening with a square cross section and a locking slot, the upper pole segments (12) each includes an upper end having a square cross section and being inserted into the respective tubular member of the hub and having a spring detent (20) biased into the slot such that the upper pole segments (12) of the upright poles being removably and non-rotatably connected to the hub respectively, and a canopy (21) being supported by the pole assembly, the canopy (21) extending a portion that is less than half the length of the lower pole segments.

Emard does not teach the connection comprising an oblong cross section for the hub and an oblong cross section for the first upper pole segment such that the two oblong cross sections connecting together so that the upper pole segment does not rotate relative to the hub. However, Pui et al. teach a portable shelter comprising a pole assembly including a plurality of hubs (12A, 12C, or 12B) each having two tubular members, at least one tubular member having an oblong cross section (12AB), a plurality of pole segments being connected to the hubs, and at least one of the pole segments having a oblong cross section with two opposite flat portions being inserted

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into the oblong cross section of the tubular member of the corresponding hub such that the flat portions of the oblong cross sections being connected together so the pole segment (14A) does not rotate relative to the hub (12A, 12B, or 12D). It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the shelter of Emard having the end of the upper pole segment and the tubular members of the hub having matching specific cross sections such as oblong cross sections as claimed instead of square cross sections of Emard's shelter as an obvious matter of design choice in frame art for easily aligning two tubular members together respectively.

Regarding claim 27, Emard further teaches the shelter, see Fig. 1, including four upright poles each removably connected to the hub.

Response to Arguments

3. In response to applicant's argument that two references to Lee and Pui et al. are not relevant to the problem being solved by the present invention, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Lee teaches a shelter having structural limitation as claimed invention except the connection between the hub and the poles. We agree that Lee does not disclose this feature. Otherwise our rejection would have been entered under section U.S.C. 102 of the statute. In this case, Pui et al. is used to teach a shelter (for sporting) comprising a net canopy supported by a pole assembly which comprises a plurality of pole members being connected by joints or hub. Pui et al. is used to teaches a connection between a

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joint or a hub and the pole members, as old and known in a frame structural art, both having matting oblong cross sections such that the pole member can be easily aligned and inserted with non-rotation into the joint or hub such that pole members are locked and connected to the joints or hubs without twisting of the pole member as solve the same problem as the claimed invention. It would have been obvious to one ordinary skill in the art to modify the pole assembly of Lee having the connection between the joint or hub and the pole members as taught by Pui et al. to solve the problem of the claimed invention since they both in a the field of frame support assembly. In fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Therefore, the rejections base upon the combination of above references is sustained.

New grounds of rejection based upon the feature that was not specifically and previously claimed in claims.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Winnie Yip/
Primary Examiner, Art Unit 3636

wy
January 16, 2008

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